



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/151529

PRELIMINARY RECITALS

Pursuant to a petition filed August 22, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on October 15, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's family care cost share has been correctly calculated.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services

1 West Wilson Street

Madison, Wisconsin 53703

By: Brian Williams

Milwaukee Enrollment Services

1220 W Vliet St

Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this hearing request to contest the amount of his family care cost share.
3. Petitioner's cost share was zero but increased in April 2013 to \$435.00 when the agency became aware of additional Social Security benefits (widow/widower). At that point a review was also conducted and the agency became aware of a Veteran's Administration (VA) benefit. This pushed Petitioner's cost share to \$588.35.
4. As of the April 2013 case review Petitioner has the following income: Social Security - \$1250.00 and VA benefits of \$561 for a total of \$1811.00.

5. Petitioner has no medical remedial expenses as all of those expenses are covered through the VA.
6. Petitioner has a special housing allowance of \$322.65 based on a shelter expense of \$486.00 and utilities of \$186.65.

DISCUSSION

People eligible for Family Care Medicaid fall into one of the following categories:

Group A eligibility

1. People 18 and over who meet full benefit EBD Medicaid financial and non-financial requirements and who are also functionally eligible for FC at either the nursing home or non-nursing home level of care.
2. People 18 and over who meet BC+ Standard Plan, Well Woman Medicaid, Medicaid through Adoption Assistance or Foster Care financial and non-financial requirements and who are functionally eligible for FC at either the nursing home or non-nursing home level of care.

Group B eligibility

People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income, who are functionally eligible for FC at the nursing home level of care, and whose income is at or below the special income limit (See the Community Waivers Special Income Limit in 39.4.1)

Group C eligibility

People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income, who are functionally eligible for FC at the nursing home level of care, and whose income is above the special income limit (see the Community Waivers Special Income Limit in 39.4.1), but whose allowable monthly expenses are sufficient to reduce their income to the medically needy limit (See EBD Medically Needy Limits in 39.4.1.)

Medicaid Eligibility Handbook (MEH), §29.3.1.

The elderly, blind and disabled (EBD) financial income limit is \$591.67 and the Community Waivers Special Income Limit is \$2130, effective January 1, 2013. *MEH, §39.4.1 and Operations Memo12-63; issued November 28, 2012.* As Petitioner's gross income is \$1811.00, it is apparent that he falls into the group B category of Family Care eligibility. Group B FCP members must make a cost share payment. *Id.*, §28.8.3.

Cost sharing is the monthly amount a waivers participant has to contribute toward the cost of his/her waiver services. *MEH, § 28.5.1.* Payment of the cost share is a condition of eligibility. *Id.* The allowable deductions from income are the personal maintenance allowance, a family maintenance allowance where the FCP member is the custodial parent, health insurance premiums, medical/remedial expenses and special exempt income. *MEH, §§28.8.3.1; 28.8.3.2 and 28.8.3.3.* The personal maintenance allowance is calculated as follows:

28.8.3.1 Personal Maintenance Allowance

The Personal Maintenance Allowance is an income deduction used primarily when calculating a cost share for a Group B waiver member. However, it is also used in the cost share calculation of a Group C waiver member when completing Section C of the [*Spousal Impoverishment*](#) Income Allocation Worksheet ([18.6.4](#)).

The personal maintenance allowance (Line 6 and Page 2 of the worksheet) is for room, board, and personal expenses. It is the total of:

1. Community Waivers Basic Needs Allowance (See [39.4.2 EBD Deductions and Allowances](#))
2. \$65 and ½ earned income deduction (See [15.7.5 \\$65 and ½ Earned Income Deduction](#)).
3. Special housing amount. This is an amount of the person's income set aside to help pay housing costs. If the waiver applicant's housing costs are over \$350, add together the following costs:
 - a. Rent.
 - b. Home or renters insurance.
 - c. Mortgage.
 - d. Property tax (including special assessments).
 - e. Utilities (heat, water, sewer, electricity).
 - f. "Room" amount for members in a Community Based Residential Facility ([CBRF](#)), Residential Care Apartment Complex (RCAC) or an [Adult](#) Family/Foster Allowance.) Home (AFH). The case manager determines and provides this amount.

The total, minus \$350, equals the special housing amount. The person can set this amount aside from his/her income.

...

MEH, §28.8.3.1.

The special exempt income deduction consists of:

1. Income used for supporting others (15.7.2.1 Support Payments).
2. Court-ordered attorney fees (15.7.2.3 Fees to Guardians or Attorneys).
3. Court-ordered guardian and guardian ad litem fees (15.7.2.3 Fees to Guardians or Attorneys).
4. Expenses associated with establishing and maintaining a guardianship. (15.7.2.3 Fees to Guardians or Attorneys)
5. Expenses associated with a Self-Support Plan (15.7.2.2 Self-Support Plan).
6. Impairment Related Work Expenses (IRWE) (15.7.4 Impairment Related Work Expenses (IRWE))
7. Maintaining a home or apartment (15.7.1 Maintaining Home or Apartment)
8. Costs associated with real property listed for sale (16.2 Assets Availability)

...

MEH, §15.7.2.

Petitioner was represented at the hearing by his daughter. He filed the appeal because of the sudden jump in his cost share from zero to \$598.35. Essentially he wanted an explanation of how the cost share is calculated and, further, maintains that it is just too large of a percentage of his income. He wonders if the cost share could be reduced if he just has someone come to his home twice a day to check on him.

The calculations above are rather detailed but provide an explanation of the calculation. The calculation is income based and does not change based on the services received. The income and expenses noted in the findings were reviewed at the hearing and they were accurate at the time of the agency determinations. Since the cost share determination of \$598.35, Petitioner's shelter expense appears to have increased to \$590.00 per month. The agency agreed that it will redetermine cost share with the new amount. Further, it is possible that the VA benefits may be disregarded in whole or in part if it consists in whole or in part of aid and attendance benefits. Petitioner and his case manager are working to try to get the VA to provide that information. If obtained, the economic support agency will again redetermine the cost share. Finally, Petitioner has an arrearage of about \$1200 and he was advised at the hearing to contact the Milwaukee County Aging and Disability finance office to determine how to pay that arrearage.

The Division of Hearings and Appeals does not make or change law and policy. It can only decide whether or not the parties in cases over which it has authority have followed and/or correctly applied the law and policy. Here I have reviewed the calculations and find no errors.

CONCLUSIONS OF LAW

That, based on the available financial information available to it, the agency has correctly determined Petitioner's cost share.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

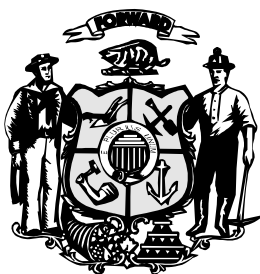
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 13th day of November, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 13, 2013.

Milwaukee Enrollment Services
Office of Family Care Expansion